

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

B-H Transfer Co.,)	
)	
Plaintiff,)	
)	
v.)	Case No.: 3:23-cv-00055
)	
E Z Smith, Inc. d/b/a Smith's Wrecker Service,)	
)	
Defendant.)	
)	CONSENT ORDER
Serve: Ann Lane)	
Registered Agent (BOC-3))	
932 Logan Cr.)	
Cary, North Carolina 27511)	

THIS MATTER is before the Court on the parties' Motion for Approval of Consent Order, (Doc. No. 8). For the reasons stated in the motion, it is GRANTED.

On or about January 19, 2023, Plaintiff was involved in an accident with the CSX Train on N. Main Street, in Wingate, North Carolina, while operating a 2021 Freightliner semi-tractor (VIN# 1FUJHHDR8MLMN8080) and 2004 Heil trailer (VIN# 5HTSN422547U09930) (hereinafter "Truck and Trailer"). After the accident, the Defendant E Z Smith, Inc. d/b/a Smith's Wrecker Service, was called by law enforcement to tow the Plaintiff's Truck and Trailer. Defendant towed Plaintiff's Truck and Trailer from the scene of the accident to Defendant's place of business located at located at 1551 Stallings Road, Matthews, North Carolina 28104, and the vehicle has remained at that location since the day of the accident.

Plaintiff filed a Motion for Immediate Possession pursuant to N.C.G.S. 44A-4 to have the Plaintiff's Truck and Trailer returned through a court order. See Docket Entry #5. Defendant has

agreed to allow Plaintiff to purchase a bond in the amount of the towing invoice (\$82,460.00) in exchange for releasing Plaintiff's Truck and Trailer. **(Exhibit A, Bond for \$86,000.00).**

Pursuant to agreement between the parties, I find that upon the Plaintiff purchasing a bond in the amount of \$82,460.00 to secure the amount of the disputed invoices for towing and cleanup services, Defendant shall release the Truck and Trailer to Plaintiff as soon as practical.


Further, nothing contained in this Order shall be deemed as a Finding of misapplication of any statutory procedures governing the transaction at issue by Defendant, and nothing contained within this Consent Order shall be deemed to prejudice Defendants right to assert a Counterclaim to attempt to collect the entire outstanding invoice Defendant contends Plaintiff owes in the amount of \$82,460.00, as well as other relief available per applicable law.

Each Party to this Consent Order shall bear their respective attorney's fees and costs incurred in the prosecution and defense of Plaintiffs Motion for Immediate Possession of the truck and trailer at issue, as well as the negotiation of the terms contained in this Consent Order.

IT IS THEREFORE ORDERED that the Motion for Consent Order, (Doc. No. 8), is GRANTED, and Motion for Immediate Possession, (Doc. No. 5), is DENIED AS MOOT. The Clerk is respectfully directed to CLOSE THE CASE.

IT IS ORDERED.

Signed: March 21, 2023


Frank D. Whitney
United States District Judge

WE CONSENT:

s/Robert B. Laws

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